Supreme Court, U.S.
FILED

031096 OCT 7 - 2003

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DONNIE F. SCHROEDER,

Petitioner/Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent/Appellee.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES

DONNIE F. SCHROEDER, Petitioner/Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent/Appellee.	No. _____ Court of Appeal Ninth Circuit No. 02-73929 Tax Court Nos. 7704-99 5443-00

STATEMENT OF QUESTIONS PRESENTED

1. The United States Court of Appeal for the Ninth Circuit failed to address and answer petitioner, Donnie F. Schroeder's questions outlined in his Petition for Rehearing En Banc.

2. The court did not consider the fact that any omitted income was due to the fact that defendant, Commission of

Internal Revenue, failed to properly communicate the requirements of the law.

3. The court failed to consider that under legislation plaintiff was not liable for the tax imposed on the gross income claimed by the defendant.

4. The court overlooked the legislative authority of regulations 6501, 662, 26 U.S.C.

5. The court did not take into consideration that the only filing requirement against the plaintiff is volunteer and not mandated by legislation.

6. The court failed to provide petitioner with an executed copy of the decision and further failed to provide a proof of service of said decision.

7. The court failed to consider petitioner's disability in denying his request for oral argument.

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STATEMENT OF BASIS FOR JURISDICTION

Petitioner, Donnie F. Schroeder, file this Petition for Writ of Certiorari after an Order filed on July 14, 2003 denying petitioner's Petition for Rehearing En Banc.

STATEMENT OF THE CASE

Petitioner filed a United States Individual Income Tax Return (form 1040) for the tax year 1995. That return was filed in late February, 1996, by first-class mail. The return was filed reporting zero income due from petitioner as petitioner had earned only wages during 1995, and had no income to report. Taxes had been paid by petitioner in the approximate amount of $4,700.00, and petitioner requested a refund in this amount.

Petitioner contends that IRS agents have a legal duty to explain the filing requirement(s) alleged by respondent to petitioner, and the IRS code sections relied upon in support of any filing requirement alleged.

Petitioner contacted the IRS frequently to check on the status of his tax refund, yet respondent initially denied ever

receiving petitioner's return concerning tax year 1995. Petitioner accordingly forwarded a second copy of his 1995 tax return in June 1996 by certified mail. The IRS signed for the 1996 letter with enclosed copy of 1995 tax return, but nevertheless refused to acknowledge that petitioner's 1995 return had been received by the IRS. Petitioner then hand-delivered a third copy of his 1995 tax return to the IRS office located on Watt Avenue in Sacramento, California on November 8, 1996.

The IRS once again refused to acknowledge that petitioner's return had been filed, and instead mailed a notice to petitioner claiming that they had not received petitioner's return. Respondent claimed petitioner's return had not been received in letters dated February and March, 1997. On March 11, 1997, petitioner hand-delivered a fourth copy of his return to the IRS office located in Sacramento California.

Once respondent finally acknowledged receipt of petitioner's return, a letter soon followed from Dennis Paiz, Agent for the Board, threatening petitioner with a $500 frivolous

filing penalty under Internal Revenue Service Code section 6702. Petitioner responded with a six-page letter. Dennis Paiz countered by providing the refund initially sought by petitioner.

Nine months later, the IRS sent petitioner an urgent notice claiming they had assessed penalties under IRC section 6702. Petitioner contended at the time, and still contends, that the burden of proof that petitioner even owes the taxes as alleged, lies with respondent, pursuant to IRC section 6703.

In good faith, petitioner attended a Problem Solving Day workshop held at the Internal Revenue Service Center. At the workshop, petitioner was told that his problem could not be solved and that he would have to take respondent to court. Petitioner agreed to do so.

In 1996 the IRS again asked the Court to impose penalties against petitioner, citing IRC section 6651(a)(1), which applies to cases of failure to file a Return (as required under the authority of Sub-chapter A of Chapter 61). Petitioner contended that he has not failed to meet any requirements set forth under

Chapter 61. Respondent has been and continues to be unable to show an IRS code section, for a class of persons of which petitioner is a member, who are subject to the filing requirement claimed by respondent.

Thereafter, on April 27, 1999 petitioner filed a petition with the United States Tax Court disputing the notice of deficiency. The United States Tax Court issued Decisions filed August 29, 2002 imposing a deficiency in income tax due from the petitioner for the taxable year 1996 in the amount of $14,699.70 and $5,479.00 for the taxable year 1995. Subsequently on November 14, 2002 petitioner filed a Notice of Appeal. Following the decision from the Court of Appeal for the Ninth Circuit filed May 20, 2003, affirming the United States Tax Court's decision, petitioner filed a Petitioner for Rehearing En Banc. On July 14, 2003 the United States Court of Appeal for the Ninth Circuit issued an Order denying petitioner's Petition for Rehearing En Banc.

ARGUMENT - REASONS FOR GRANTING WRIT

Petitioner contends that the United States Tax Court and the Court of Appeals for the Ninth Circuit erred when they failed to provide petitioner with an authority mandating petitioner to pay taxes on wages exchanged for labor.

Petitioner further contends that the courts erred in failing to provide petitioner with direct answers to the questions outlined in his Petition for Rehearing En Banc.

Additionally, petitioner believes that his constitutional rights were violated when the courts denied his request for oral argument. Petitioner requested oral argument based on a disability and he strongly feels that this disability was not taken into consideration when deciding to deny his request for oral argument.

Further, petitioner questions the validity of the Order filed July 14, 2003 and the Decision filed and entered on May 20, 2003. Petitioner contends that neither the Order or Decision can be valid without being properly executed by the presiding

judges. Furthermore, the Decision (entered on May 20, 2003) was sent under a cover letter stating that the enclosed was a certified copy of the Decree of the Court, but the Decision does not indicate any such certification.

CONCLUSION

Petitioner contends that for the reasons stated herein that the court should grant petitioner's Writ of Certiorari.

Dated:

Respectfully submitted,

_____

DONNIE F. SCHROEDER
PETITIONER PRO SE

FILED: July 14, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONNIE F. SCHROEDER, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 02-73929 Tax Ct. Nos. 7704-99 5443-00 Nevada (Reno) ORDER

Before: PREGERSON, REINHARDT, and GRABER, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed.R. App.P.35.

The petition for hearing en banc is denied.

No further filings will be accepted in this closed appeal.

FILED: May 20, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONNIE F. SCHROEDER, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 02-73929 Tax Ct. Nos. 7704-99 5443-00 MEMORANDUM*

Appeal from a decision of the United States Tax Court

Submitted May 12, 2003**

Before: PREGERSON, REINHARDT, and GRABER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36.3.

** Because the panel unanimously finds this case suitable for decision without oral argument, Schroeder's request for oral argument is denied *See* Fed.R.App.P.34(a)(2).

Donnie F. Schroeder appeals pro se a decision of the tax court sustaining the Commissioner of Internal Revenue's ("Commissioner") determination of federal income tax and penalties due for 1995 and 1996. We have jurisdiction pursuant to 26 U.S.C. § 7482(a). We review de novo the tax court's conclusions of law, and review for clear error to its findings of fact. *Baizer v. Comm'r,* 204 F.3d 1231, 1233-34 (9th Cir.2000). We affirm.

The tax court did not err by finding the Commissioner's notice of deficiency for tax year 1995 timely. *See* 26 U.S.C. § 6501(e)(1)(A) (permitting assessment within 6 years where taxpayer omits more than 25 percent of gross income from the return).

The tax court did not err by finding Schroeder's wages to be taxable income. *See Maisano v. United States*, 908 F.2d 408, 409 (9th Cir. 1990) (per curiam).

The record reports the tax court's assessment of penalties pursuant to 26 U.S.C. § 6662(a). *See Custom*

Chrome, Inc. v. Comm'r, 217 F.3d 1117, 1127-28 (9th Cir. 2000).

Schroeder's remaining contentions are unpersuasive.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 02-73929
CT/AG#: 7704-5443-00

DONNIE F. SCHROEDER

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee

Upon Petition to Review a Decision of Commissioner of Internal Revenue.

THIS CAUSE came on to be heard on the Transcript of the Record from the Commissioner of Internal Revenue and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here

ordered and adjudged by this Court, that the Decision of the said agency in this cause be, and hereby is Affirmed.

Filed and entered 05/20/03.